

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California, 94102-3660

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669
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DATE: September 10, 2003

SUBJECT: Small Claims: Discovery of Judgment Debtor's Assets (revise
and adopt form SC-133) (Action Required)

Issue Statement

Form SC-133 allows a small claims judgment creditor to discover the assets of a small claims judgment debtor who does not pay the judgment. The current wording on the form could be misread so that a judgment debtor would believe that mailing a completed form would stay execution of judgment. A clerical error in the footer of the form shows that the form is "approved" for optional use when in fact the form was adopted in 1980 and revised several times for mandatory use. Vehicles owned by the debtor must be listed on the reverse of the form, but no license and vehicle identification numbers need to be listed for each vehicle.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004, adopt for mandatory use the *Judgment Debtor's Statement of Assets (Small Claims)* (form SC-133) and revise the form to (1) clarify that the judgment can be executed immediately but that if the judgment is not paid, then form SC-133 is due within 30 days after the clerk mails notice of the judgment; and (2) add a column for listing vehicle identification and license numbers for each vehicle listed.

The revised form is attached at pages 5–6.

Rationale for Recommendations

This form allows a small claims judgment creditor to learn the assets of a small claims judgment debtor who does not pay the judgment. The current form has misled at least one small claims judgment debtor into believing that execution on the judgment would be stayed for 30 days upon filing of the form.

A small claims judgment debtor has requested that the Judicial Council correct misleading instructions under item 3 on form SC-133. These instructions currently say, “If you lose your appeal or motion to vacate, you must pay the judgment, including postjudgment costs and interest, and complete and mail this form to the judgment creditor within **30 days** after the date the clerk mails or delivers to you (a) the denial of your motion to vacate, or (b) the dismissal of your appeal, or (c) the judgment against you on your appeal.” (Bold in original.) The judgment debtor wrote that after he read the instructions on form SC-133, item 3, he believed that he had 30 days to *pay or to file* the *Statement of Assets* form. To his surprise, the judgment creditor levied on the debtor’s assets shortly after the judgment was entered.

The committee agreed that the language in item 3 could be misread to mean that a judgment debtor must *pay and mail* the *Statement of Assets* form within 30 days after the clerk mails or delivers notice of judgment. To clarify that the judgment must be paid immediately and can be enforced immediately, the statement currently under item 4 notifying the debtor that the judgment is no longer suspended was moved up to item 3 in the revised form, and the lead-in sentence under item 3 was revised to read, “If you lose your appeal or motion to vacate, you must pay the judgment, including postjudgment costs and interest.” The statement informing the debtor to complete and mail the *Statement of Assets* form within 30 days after the judgment is mailed was moved down to item 4 as a separate statement. The following lead-in phrase was added to this statement to clarify that the form must be completed only if the judgment was not paid, to read: “Unless you have paid the judgment, complete and mail this form to the judgment creditor within **30 days** after the date the clerk mails or delivers to you (a) the denial of your motion to vacate, or (b) the dismissal of your appeal, or (c) the judgment against you on your appeal.” Item 2 was amended to add, “Mailing this completed form does not stay enforcement of the judgment.”

A small claims judgment debtor must complete the form within 30 days after notice of judgment if the judgment is not paid, and the Judicial Council has statutory authority to approve or adopt the form. (See Code of Civ. Proc., § 116.830.) The revised form should be adopted for mandatory use, because

the statute requires the judgment debtor to complete the Judicial Council form within 30 days after it is mailed by the clerk with the notice of entry of judgment. This would be consistent with council action when it first adopted the form in 1980 to implement the statutory mandate and with council action when it revised the form effective January 1, 1992, 1995, and 1998. Apparently through clerical error, the footer states that the form is “approved” or for optional use, which is not consistent with the intent of the statute and previous council action. The footer should be corrected to indicate that the form is “adopted for mandatory use.”

On the reverse of the form, under item 9, there is a category for listing “property” including “all automobiles, other vehicles, and boats owned in your name or jointly.” To help identify those vehicles in the event that the judgment creditor seeks to enforce the judgment, an additional column has been added to identify the license number and vehicle identification number for each vehicle.

Alternative Actions Considered

Although the form could be left unchanged, small claims judgment debtors might be misled if the corrections and revisions are not made and the parties might incorrectly assume that the form is optional.

Comments From Interested Parties

Twenty-seven comments were received. Of those, 25 agreed with the form as drafted and 1 agreed with the form if a further change were made. One small claims advisor objected to the revised form because a majority of defendants who lose their case do not bother to fill out the form and he commented, “Why waste resources on modifying a form that almost no one uses?”

Several commentators noted enforcement problems with the form. Judgment debtors ignore the requirements of Code of Civil Procedure section 116.830, which requires the judgment debtor to complete the form within 30 days after notice of judgment if the judgment is not paid. Correcting the footer on the form to indicate that the form is adopted for mandatory use may reinforce the statutory mandate. The subcommittee will also put on its work plan for review whether it should recommend a legislative solution, such as penalties or sanctions for failure to complete the form.¹

The Judicial Council’s Rules and Projects Committee (RUPRO) recommended adding a column to the “property” listing of “automobiles, other vehicles, and boats” owned by the debtor on page 2 of the form, under item 9, to identify the

¹ The comment chart and subcommittee responses are attached at pages 7–10.

license and vehicle identification numbers for each vehicle. This may assist the judgment creditor in any enforcement proceedings to collect on the judgment.

Implementation Requirements and Costs

Courts may incur some minor costs in making the revised forms available to the public. Some courts no longer keep supplies of paper forms on hand, however. Instead, these courts will print a form on request from the California Courts Web site for a small fee. Commercial publishers may incur costs in publishing the new forms.

Attachments

JUDGMENT CREDITOR (the person or business who won the case) (*name*):JUDGMENT DEBTOR (the person or business who lost the case and owes money) (*name*):

SMALL CLAIMS CASE NO.:

NOTICE TO JUDGMENT DEBTOR: You *must* (1) pay the judgment or (2) appeal or (3) file a motion to vacate. If you fail to pay or take one of the other two actions, you must complete and mail this form to the judgment creditor. If you do not, you may have to go to court to answer questions and may have penalties imposed on you by the court.

AVISO AL DEUDOR POR FALLO JUDICIAL: Usted debe (1) pagar el monto del fallo judicial, o (2) presentar un recurso de apelación o (3) presentar un recurso de nulidad. Si usted no paga el fallo o presenta uno de estos dos recursos, deberá llenar y enviar por correo este formulario a su acreedor por fallo judicial. Si no lo hace, es posible que deba presentarse ante la corte para contestar preguntas y pagar las multas que la corte le pueda imponer.

INSTRUCTIONS

The small claims court has ruled that you owe money to the judgment creditor.

- You may appeal a judgment against you only on the other party's claim. You may *not* appeal a judgment against you on *your* claim.
 - If you appeared at the trial and you want to appeal, you must file a *Notice of Appeal* (form SC-140) within 30 days after the date the *Notice of Entry of Judgment* (form SC-130) was mailed or handed to you by the clerk.
 - If you did not appear at the trial, before you can appeal, you must first file a *Notice of Motion to Vacate Judgment and Declaration* (form SC-135) and pay the required fee within 30 days after the date the *Notice of Entry of Judgment* was mailed or handed to you. The judgment cannot be collected until the motion is decided. If your motion is denied, you then have 10 days after the date the notice of denial was mailed to file your appeal.
- Unless you **pay the judgment or appeal the judgment or file a motion to vacate**, you must fill out this form and mail it to **the person who won the case** within **30 days** after the *Notice of Entry of Judgment* was mailed or handed to you by the clerk. Mailing this completed form does not stay enforcement of the judgment.
- If you lose your appeal or motion to vacate, you must pay the judgment, including postjudgment costs and interest. As soon as the small claims court denies your motion to vacate and the denial is not appealed, or receives the dismissal of your appeal or judgment from the superior court after appeal, the judgment is no longer suspended and may be immediately enforced against you by the judgment creditor.
- Unless you have paid the judgment, complete and mail this form to the judgment creditor within **30 days** after the date the clerk mails or delivers to you (a) the denial of your motion to vacate, or (b) the dismissal of your appeal, or (c) the judgment against you on your appeal.

If you were sued as an individual, skip this box and begin with item 1 below. Otherwise, check the applicable box, attach the documents indicated, and complete item 15 on the reverse.

- ☐ (*Corporation or partnership*) Attached to this form is a statement describing the nature, value, and exact location of all assets of the corporation or the partners, and a statement showing that the person signing this form is authorized to submit this form on behalf of the corporation or partnership.
- ☐ (*Governmental agency*) Attached to this form is the statement of an authorized representative of the agency stating when the agency will pay the judgment and any reasons for its failure to do so.

JUDGMENT DEBTOR'S STATEMENT OF ASSETS**EMPLOYMENT**

- What are your sources of income and occupation? (*Provide job title and name of division or office in which you work.*)
- Name and address of your business or employer (*include address of your payroll or human resources department, if different*):
 - If not employed, names and addresses of all sources of income (*specify*):
- How often are you paid?

<input type="checkbox"/> daily	<input type="checkbox"/> every two weeks	<input type="checkbox"/> monthly
<input type="checkbox"/> weekly	<input type="checkbox"/> twice a month	<input type="checkbox"/> other (<i>explain</i>):
- What is your gross pay each pay period? \$
- What is your take-home pay each pay period? \$
- If your spouse earns any income, give the name of your spouse, the name and address of the business or employer, job title, and division or office (*specify*):

CASH, BANK DEPOSITS

7. How much money do you have in cash? \$
8. How much other money do you have in banks, savings and loans, credit unions, and other financial institutions either in your own name or jointly (*list*):

Name and address of financial institution	Account number	Individual or joint?	Balance
a.			\$
b.			\$
c.			\$

PROPERTY

9. List all automobiles, other vehicles, and boats owned in your name or jointly:

Make and year	License and vehicle identification (VIN) numbers	Value	Legal owner if different from registered owner	Amount owed
a.		\$		\$
b.		\$		\$
c.		\$		\$
d.		\$		\$

10. List all real estate owned in your name or jointly:

Address of real estate	Fair market value	Amount owed
a.	\$	\$
b.	\$	\$

OTHER PERSONAL PROPERTY (Do not list household furniture and furnishings, appliances, or clothing.)

11. List anything of value not listed above owned in your name or jointly (*continue on attached sheet if necessary*):

Description	Value	Address where property is located
a.	\$	
b.	\$	
c.	\$	

12. Is anyone holding assets for you? ☐ Yes. ☐ No. If yes, describe the assets and give the name and address of the person or entity holding each asset (*specify*):

13. Have you disposed of or transferred any asset within the last 60 days? ☐ Yes. ☐ No. If yes, give the name and address of each person or entity who received any asset and describe each asset (*specify*):

14. If you are not able to pay the judgment in one lump sum, you may be able to make payment arrangements with the person or business who won the case (the judgment creditor). State the amount that you can pay each month: \$, beginning on (*date*): . If you are unable to agree, you may also ask the court for permission to make installment payments by filing a *Request to Pay Judgment in Installments* (form SC-106).

15. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

Mail or deliver this completed form to the judgment creditor at the address shown on the Notice of Entry of Judgment form.

SPR03-24

Small Claims: Judgment Debtor's Statement of Assets (Small Claims)
(revise form SC-133)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Rachelle Agatha Executive Officer Superior Court of California, County of Amador	A	N	None.	
2.	Mr. Saul Bercovitch The State Bar of California	A	Y	Commission on Access to Justice supports this proposal.	
3.	Mr. Greg Blevins Attorney Tulare County Small Claims Advisor	A	N	None.	
4.	Mr. Allen J. Capeloto Small Claims Advisor Superior Court of California, County of San Mateo	A	N	I agree with the proposed changes, but I do not think they go far enough. Section 116.830 is one of the most abused small claims statutes. Judgment debtors often ignore their responsibilities under this section or provide the creditor with misleading information. I would strongly urge adding to the form the language in 116.830(d), dealing with penalties for failure to comply. I would also recommend amending 116.830(d) so as to allow for sanctions if the defendant has provided grossly incomplete or misleading information.	The committee has agreed to put enforcement of this form on its work plan for review and consideration.
5.	Ms. Monique Chavez Supervisor Civil & Small Claims Superior Court of California, County of Los Angeles	A	N	None.	
6.	Ms. Janet Deffebach Supervising DC II Superior Court of California, County of Alhambra	A	N	None.	

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Small Claims: Judgment Debtor's Statement of Assets (Small Claims)
(revise form SC-133)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
7.	Ms. Sue DuFour Supervising Legal Clerk II Superior Court of California, County of Stanislaus	A	N	None.	
8.	Ms. Christine Fabris Court Services Coordinator Mediation Center of San Joaquin County	A	N	None.	
9.	Mr. Stan Ferrell, ADOC Superior Court of California, County of Los Angeles	A	N	None.	
10.	Mr. Robert Gerard President Orange County Bar Association	A	Y	None.	
11.	Ms. Barbara Hefner Supervisor Superior Court of California, County of Merced	A	N	None	
12.	Ms. Maida Jacobo Small Claims Deputy Clerk Superior Court of California, County of Santa Cruz	A	N	None.	
13.	Ms. Carol Johnson Supervising Clerk—Civil & Small Claims Superior Court of California, County of Kern	A	N	None.	
14.	Hon. F. King Kimball	A	N	It only makes sense to remove misleading language	

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Small Claims: Judgment Debtor's Statement of Assets (Small Claims)
(revise form SC-133)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Referee Superior Court of California, County of Imperial			from the forms.	
15.	Ms. Kelli Lyerla Paralegal/Small Claims Advisor Napa County Counsel	A	N	None.	
16.	Ms. Wanda Mackey Court Services Supervisor Superior Court of California, County of Shasta	A	N	None.	
17.	Mr. Gregg Martino Judge Pro Tem—Small Claims Superior Court of California, County of Mono	AM	N	Still seems confusing. I would suggest you spell out that enforcement is not stayed at all unless a Notice of Appeal or Motion to Vacate is filed. Add, after Item 2, "The filing of this form does not stay enforcement of judgment. Only the filing of a Notice of Appeal or Notice of Motion to Vacate Judgment and Declaration does so."	The committee agreed with this suggestion. It added the sentence "Filing this form does not stay enforcement of the judgment" at the end of item 2 under the instructions.
18.	Ms. Sandra Mason Director of Civil Operations Superior Court of California, County of San Luis Obispo	A	N	None.	
19.	Ms. Laraine Noel Court Services Supervisor Superior Court of California, County of Trinity	A	N	None.	
20.	Ms. Christine Norman	A	N	None.	

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Small Claims: Judgment Debtor's Statement of Assets (Small Claims)
(revise form SC-133)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	LPA II Superior Court of California, County of San Bernardino (Big Bear Court)				
21.	Ms. Nora Shea Court Supervisor II Superior Court of California, County of San Francisco	A	N	None.	
22.	Ms. S. Stuchlik Court Section Supervisor Superior Court of California, County of Alameda	A	N	None.	
23.	Mr. Richard K. Uno Managing Attorney Human Rights/Fair Housing Commission of the City and County of Sacramento	N	N	WHO cares? In my experience at our small claims advisory, the great majority of defendants who lose their cases do not bother to fill out the <i>Judgment Debtor's Statement of Assets</i> . Why waste resources on modifying a form that almost no one uses?	Refer to the committee's response under no. 4, above, regarding enforcement of the form.
24.	Ms. Jan Weaver, Supervisor Superior Court of California, County of Placer	A	N	None.	
25.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	None.	
26.	Ms. Anita Wilcox Small Claims Advisor San Luis Obispo Small Claims Advisory	A	N	None.	
27.	Ms. Millie Wise	A	N	This is a very good change. Anything to make it	

SPR03-24**Small Claims: Judgment Debtor's Statement of Assets (Small Claims)**
(revise form SC-133)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Legal Process Supervisor Superior Court of California, County of San Joaquin			easier for litigants to understand the wording is greatly appreciated.	